

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

KELVIN JACKSON

Plaintiff,

**5:16-cv-647
(GLS/TWD)**

v.

JOHN GUNSLUS et al.

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

KELVIN JACKSON
157 Parkway Dr.
Syracuse, New York 13207

**Gary L. Sharpe
Senior District Judge**

ORDER

The above-captioned matter comes to this court following a Report-Recommendation and Order by Magistrate Judge Therese Wiley Dancks, duly filed on June 24, 2016. (Dkt. No. 5.) Following fourteen days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections having been filed, and the court having reviewed the

Report-Recommendation for clear error, it is hereby

ORDERED that the Report-Recommendation and Order (Dkt. No. 5) is **ADOPTED** in its entirety; and it is further

ORDERED that the complaint (Dkt. No. 1) be **DISMISSED WITH PREJUDICE AND WITHOUT LEAVE TO AMEND** against Defendants Gunsalus, Lashomb, Smith and Fowler in their official capacities; and it is further

ORDERED that the complaint be **DISMISSED WITH PREJUDICE AND WITHOUT LEAVE TO AMEND** against Defendant Syracuse Police Department; and it is further

ORDERED that the complaint be **DISMISSED WITHOUT PREJUDICE AND WITH LEAVE TO AMEND** against Defendants Smith, Fowler, and the City of Syracuse; and it is further

ORDERED that this action be allowed to proceed against Defendants Gunsalus and Lashomb in their individual capacities on Plaintiff's § 1983 claims for excessive force and assault and batter, and that Defendant or their counsel, be required to file a response as provided for in Rule 12 of the Federal Rules of Civil Procedure; and it is further

ORDERED that within thirty (30) days of the date of this order,

plaintiff may file an amended complaint, a complete pleading that supersedes his original complaint in all respects and shall not include any claims that have been dismissed with prejudice by this court; and it is further

ORDERED that the clerk of the court serve a copy of this order upon the parties in accordance with this court's Local Rules.

IT IS SO ORDERED.

July 25, 2016
Albany, New York

Gary L. Sharpe
Gary L. Sharpe
U.S. District Judge